

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

Case Number: 1:12-cv-00257-JB-LFG

LARRY GOLDSTONE,  
CLARENCE G. SIMMONS, III  
and JANE E. STARRETT,

Defendants.

**NOTICE OF SUPPLEMENTAL AUTHORITY**

Pursuant to Local Rule of Civil Procedure 7.8(b) and in further opposition to the Defendants' Motions to Dismiss of Defendants, Plaintiff Securities and Exchange Commission submits this Notice of Supplemental Authority to raise with the Court a significant decision that has recently been decided.

*SEC v. Syron*, No. 11 Civ. 9201 (RJS), 2013 WL 1285572 (S.D.N.Y. March 28, 2013) supports two positions taken by the SEC in its oppositions to Defendants' Motions to Dismiss. The first is that a public filing adequately alleges a misrepresentation if an investor could plausibly be misled, even if Defendants have an equally plausible reading that would not mislead. *Syron*, 2013 WL 1285572 at \*15-16 (finding that even if Defendants understood and used the term "subprime" in a narrow manner, that did not mean disclosures were not misleading if investors could have plausibly interpreted the term more broadly). Similarly, even if Defendants claim that they had the intent and ability to hold Thornburg's Purchased ARM Securities because they had undocumented agreements with lenders to forbear selling the securities (a contention we do not find plausible), a misrepresentation has been alleged if it is plausible that an investor would

believe Thornburg did not have the ability to hold because Thornburg's lenders had the right to sell the securities.

Secondly, *Syron* reiterates the “well settled” law “that so called ‘half truths’—literally true statements that create a materially misleading impression—will support claims for securities fraud.” *Id.* at \*17, quoting *SEC v. Gabelli*, 653 F.3d 49, 57 (2d Cir. 2011). Thus, Freddie Mac's accurate quantification of certain subprime loans did not excuse its suggestion that it had no other subprime exposure. *Id.* Likewise, Thornburg's disclosure of impairments to its Purchased ARM Securities as an unrealized loss on its balance sheet does not excuse its failure to realize that loss on its income statement, and its disclosure of having successfully met margin calls, even if true, does not excuse its failure to state that it had only done so through lender forbearance.

Dated: April 22, 2013

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 22, 2013, the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system that will send notification of such filing to all counsel of record.

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